

HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.NO. 10497 OF 1999

DATED: 12.7.2006

Between:

B. Ramakrishna Reddy

... Petitioner

and

The Dy. Registrar/Divisional Co-op
Officer, Mahaboobnagar

... Respondent

HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.NO.10497 OF 1999

ORAL ORDER:

The writ petition is by the Secretary, Primary Agricultural Cooperative Society, Yenmangandla, Nawabpet Mandal, Mahaboobnagar (for short 'the Society') and is directed against the order of the Cooperative Tribunal, Hyderabad dated 31.8.1998 rejecting C.T.A.No.43 of 1997 which is an appeal filed by the petitioner against a surcharge order of the 1st respondent dated 14.2.1997 in R.C.No.1422/95-B, whereby the petitioner has been found guilty of having failed to discharge his manifest duties as per the byelaws of the Society, to have misappropriated funds by commission of breach of trust and to have fraudulently retained the amounts of the Society and caused loss to the assets of the Society. The petitioner was surcharged a total amount of Rs.3,06,330/- which is directed to be recovered from the petitioner as arrears of land revenue.

The petitioner is working as a Paid Secretary of the Society. It requires to be noticed that the Society was impleaded as the 2nd respondent to the writ petition, but the writ petition was dismissed as

against the 2nd respondent by the order of this court dated 7.3.2003 as the petitioner did not serve notices on the 2nd respondent in the writ petition.

By the proceedings dated 31.5.1995 and 21.3.1996 of the Joint Registrar-cum-District Cooperative Officer, Mahabubnagar, an enquiry under Section 51 of the A.P. Cooperative Societies Act, 1964 ('the Act') was ordered into the affairs of the Society. Enquiry was duly conducted and the enquiry report submitted on 29.6.1996 by the Cooperative Sub Registrar. A Special Audit Report was also submitted reporting several and serious irregularities committed in the management of the Society during the years 1994-95 vide the Special Audit Report dated 20.6.1996. These reports revealed instances of gross supervisory negligence, misappropriation of funds of the Society, illegal retention of funds and serious financial irregularities in the sale of fertilizers and maintenance of the relevant registers with a view to fudge the defalcation of accounts. These reports revealed a prima facie implication of the petitioner as the Secretary of the Society. Therefore, an enquiry under Section 60 (1) of the Act was initiated to surcharge the persons responsible for the misappropriation and mismanagement. A surcharge notice dated 29.8.1996 was issued to the petitioner and was served on him. The petitioner failed to submit any explanation. Another notice dated 30.10.1996 was personally served on the petitioner. Having received this notice the petitioner again chose to be unresponsive to the enquiry under Section 60 (1) of

the Act. In the circumstances, on the basis of the enquiry under Section 51 of the Act and the Special Audit Report, the 1st respondent passed the impugned order dated 14.2.1997 concluding that the petitioner had failed to discharge his duties, had misappropriated funds, had committed breach of trust and had fraudulently retained the amounts and thereby caused loss to the assets of the Society. In respect of eight instances of such negligence, misappropriation and fraudulent retention of monies, conclusions were recorded and the petitioner found liable in respect of various amounts, cumulatively in an amount of Rs.3,06,330/-.

On behalf of the petitioner, it is urged at the hearing of the writ petition that though the petitioner was found guilty of misappropriation and rightly, it is not as though the petitioner was alone guilty of misappropriation and that he had done all that he did at the instance of the President, as the President is the Chief Executive Officer of the Society. On the dictation/orders of the President of the Society, the petitioner admits to have committed misappropriation and defalcation of funds.

This is no defence in law. The petitioner is a paid servant of the Society and not of the President of the Society. Neither the President or even the entire management of the Society nor any officer of the registration department including the Registrar of Cooperative Societies is entitled to issue any directives to commit an illegality. Misappropriation of funds is not part of the official duty of any

employee and it is not a defence to contend that the misappropriation was indulged in at the instance of a President of the Society.

Another contention urged by Sri S. Siva Prasad, learned counsel for the petitioner, is that though the President was also responsible for misappropriation, the entire financial burden is cast on the petitioner. Even this contention is misconceived. The petitioner was the Paid Secretary of the Society. It was his duty to ensure that the affairs and management of the Society are conducted on sound and legitimate lines. The loss to the assets of the Society was caused as rightly found by the 1st respondent, on account of the wilful negligence and deficiency of official functioning on the part of the petitioner, a Paid Secretary of the Society. The petitioner is thus primarily responsible for the misappropriation and defalcation of the funds. This is what the Cooperative Tribunal, Hyderabad also found in rejecting the petitioner's appeal and confirming the orders of the 1st respondent. The surcharge order and the dismissal of the petitioner's appeal thereagainst are impeccable and are not liable to be interfered with.

There are no merits. The writ petition is accordingly dismissed. There shall be no order as to costs.

GODA RAGHURAM, J

Date: 12.7.2006
CVM

